



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

eFILED

10/13/2016 1:12:36 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY **Education**

RULE TYPE **Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 126-**

RULE NAME **Issuance of the State of West Virginia High School Equivalency Diploma (Policy 2444.4)32**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS

Monday, November 14, 2016

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Jill M Newman -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 126-032



Rule Id: 10270



Document: 32051

126CSR32

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 32

ISSUANCE OF THE STATE OF WEST VIRGINIA HIGH SCHOOL EQUIVALENCY DIPLOMA (2444.4)

§126-32-1. General.

1.1. Scope. -- The purpose of the State of West Virginia High School Equivalency Diploma is to provide appropriate recognition of educational attainment to those individuals who have demonstrated that they have attained academic skills equivalent to those at the high school completion level by satisfactorily passing the high school equivalency assessment approved by the West Virginia Department of Education.

1.1.a. The West Virginia Department of Education approved high school equivalency assessment mirrors the performance standards reflected at the national and state levels and demonstrates the attainment of developed abilities acquired through completion of a four-year high school program of study.

1.2. Authority. -- West Virginia Constitution, Article XII, Section 2; W. Va. Code §18-2-5 and §18-8-6.

1.3. Filing Date. -- October 13, 2016.

1.4. Effective Date. -- November 14, 2016.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR32, West Virginia Board of Education (WVBE) Policy 2444.4, Issuance of the State of West Virginia High School Equivalency Diploma, filed March 13, 2008 and effective July 1, 2008.

§126-32-2. State of West Virginia High School Equivalency Diploma.

2.1. The West Virginia Department of Education, hereinafter WVDE, issues a State of West Virginia High School Equivalency Diploma based upon satisfactory scores earned on the WVDE approved high school equivalency assessment.

2.2. West Virginia provides the Option Pathway. Approved testing sites are authorized to test a selected population of students sixteen (16), seventeen (17) and eighteen (18) years of age, enrolled in an accredited school and engaged in an appropriate Option Pathway program. The student may earn a State of West Virginia High School Equivalency Diploma and/or a high school diploma, according to the completion level of the program.

§126-32-3. Applying for Testing.

3.1. First time applicants are required to take and pass an approved practice test with the minimum score as determined by the WVDE (WV passing standard may exceed national minimum passing standard).

3.2. A valid and current state-issued photo identification, i.e., driver's license, state alternative identification, military identification or a valid passport, with current name, birth date, and preferably a Social Security number will be required prior to and during all testing sessions. Option Pathway students may use photo identification issued by the high school. Failure to present applicable photo identification will result in a loss of testing privilege until such identification is presented. (See also Section 7.1.)

§126-32-4. Basis for Granting the State of West Virginia High School Equivalency Diploma.

4.1. WVDE requires that applicants taking the approved high school equivalency assessment achieve a minimum passing score as determined by the WVDE.

4.2. Prior to taking the WVDE approved high school equivalency assessment, individuals must provide documentation from an Adult Education (AE) instructor or an Option Pathway instructor of taking and passing an approved practice test by achieving the minimum score as determined by the WVDE (WV passing standard may exceed national minimum passing standard).

4.3. Individuals passing the WVDE approved high school equivalency assessment will receive a State of West Virginia High School Equivalency Diploma. Students enrolled in the Option Pathway and passing all subjects of the WVDE approved high school equivalency assessment will receive a State of West Virginia High School Equivalency Diploma. The Option Pathway student successfully passing all subjects of the WVDE approved high school equivalency assessment and successfully completing either a state-approved CTE concentration or a locally developed personalized concentration of course work will receive a standard high school diploma. [Refer to W. Va. 126CSR42, Assuring the Quality of Education: Regulations for Education Programs (2510).]

§126-32-5. Testing of Individuals Eighteen (18) Years of Age and Younger.

5.1. For the purposes of admission to take the WVDE approved high school equivalency assessment, the official dropout date shall be defined as, "the school day after the student's last day of attendance," as outlined in W. Va. 126CSR81, West Virginia Board of Education Policy 4110, "Attendance."

5.2. Individuals who are eighteen (18) years of age or seventeen (17) years of age are eligible to test by qualifying under any of the following categories:

5.2.a. The candidate has been officially withdrawn from a regular high school, i.e., officially withdrawn or home-schooled prior to test registration as evidenced by documentation from the last school/system attended or by documentation from the county attendance director for the home-schooled student. Documentation must include the withdrawal date as indicated in Section 5.1. or home-school dates. The candidate must also provide documentation from an AE instructor of taking and passing an approved practice test by achieving the minimum score as determined by the WVDE (WV passing standard may exceed national minimum passing standard); or

5.2.b. The candidate is enrolled in the Option Pathway.

5.3. Individuals who are sixteen (16) years of age are eligible to test by qualifying under the following categories:

5.3.a. The candidate is enrolled in the Option Pathway.

§126-32-6. Testing of Individuals Enrolled in the Option Pathway.

6.1. Examinees, at least sixteen (16) years of age, who are enrolled in the Option Pathway program may take the WVDE approved high school equivalency assessment without withdrawing from high school provided that the following conditions are met:

6.1.a. The school, government program or institutional facility was approved by the WVDE to implement the Option Pathway.

6.1.b. The course content must be rigorous enough to support passage of the WVDE approved high school equivalency assessment and align with the academic expectations of the high school. Option Pathway classes should be structured as closely as possible to an AE classroom providing a very comprehensive program of study for mathematics, writing, social studies, reading and science.

6.1.c. The Option Pathway student must be recommended to the Option Pathway program by a member of the school, government program or institutional facility's professional staff.

6.1.d. The Option Pathway student receives counseling prior to entering the program, while participating in the program and upon exiting the program.

6.1.e. A parent/guardian, unless the student is placed in an institutional facility, must give written-consent for the student to participate in the Option Pathway.

6.1.f. The candidate must also provide documentation from the Option Pathway instructor of taking and passing an approved practice test by achieving the minimum score as determined by the WVDE (WV passing standard may exceed national minimum passing standard).

6.1.g. The Option Pathway student may begin taking the WVDE approved high school equivalency assessment at the age of sixteen (16).

6.2. The Option student passing all subjects of the WVDE approved high school equivalency assessment will receive a State of West Virginia High School Equivalency Diploma. The Option student successfully passing all subjects of the WVDE approved high school equivalency assessment and successfully completing either a state-approved CTE concentration or a locally developed personalized concentration of course work will receive a standard high school diploma. [Refer to W. Va. 126CSR42, Assuring the Quality of Education: Regulations for Education Programs (2510).]

6.2.a. A high school diploma is earned and the student is counted as a graduate if the student meets the following requirements:

6.2.a.1. Attends Option Pathway preparation classes for the WVDE approved high school equivalency assessment;

6.2.a.2. Passes an approved practice test and the WVDE approved high school equivalency assessment;

126CSR32

6.2.a.3. Passes all subjects of the WVDE approved high school equivalency assessment and completes either a state-approved CTE concentration or a locally developed personalized concentration of course work. [Refer to W. Va. 126CSR42, Assuring the Quality of Education: Regulations for Education Programs (2510).]

6.2.b. A student who successfully completes the Option Pathway has a compelling reason to attend school for fewer than four full years and/or be scheduled for courses for less than the full instructional day. For example, when a student successfully passes the WVDE high school equivalency assessment and completes the career and technical concentration, he or she has completed the requirements for graduation even though the graduation cohort may not yet have graduated. Another example would be when a student has successfully passed the WVDE high school equivalency assessment but has not yet completed the career and technical concentration. That student may only need to attend school during the part of the day for the career and technical courses. In both examples, the students would not need to be enrolled for the four full years or for the full instructional day. The county or school would not acquire a penalty for graduation rate or attendance rate in either scenario.

6.2.c. A high school diploma is earned and the student is counted as a graduate if the senior, needing only to pass one subject or several subjects in the same content area, uses and passes the WVDE approved high school equivalency assessment as credit recovery for only one content area. The student must meet the following requirements:

6.2.c.1. Is a senior with credit deficiencies;

6.2.c.2. Passes the content area of an approved practice test and the WVDE approved high school equivalency assessment by achieving the minimum score as determined by the WVDE (WV passing standard may exceed national minimum passing standard); and

6.2.c.3. Continues attending and maintaining passing grades in all other classes.

6.2.d. The State of West Virginia High School Equivalency Diploma is earned and the student is counted as a completer but not a dropout or a graduate if the student passes the WVDE approved high school equivalency assessment prior to dropping out of school.

§126-32-7. Testing of Individuals Participating in a Government Program.

7.1. Examinees, at least sixteen (16), seventeen (17) or eighteen (18) years of age, who are participating in a residential government program, i.e., Job Corps, and/or other approved career focused federal residential programs, may be tested provided that the following conditions are met:

7.1.a. The candidate at least seventeen (17) years of age has been officially withdrawn from a regular high school as evidenced by documentation from the last school/system attended, or

7.1.b. If the program is approved as an Option Pathway program and the candidate is enrolled in the program, the candidate sixteen (16), seventeen (17) or eighteen (18) years of age must follow the Option Pathway guidelines.

7.1.c. The candidate has taken and passed the practice test for the WVDE approved high school equivalency assessment (WV passing standard may exceed national minimum passing standard) as evidenced by documentation from an instructor at the facility.

7.2. Individuals who are sixteen (16), seventeen (17) or eighteen (18) years of age and are residents of a West Virginia state-operated institutional facility may take the tests while the examinee is under the control of the facility.

7.3. Adjudicated youth sixteen (16), seventeen (17) or eighteen (18) years of age, who are under the control of a court, detention center, group care facility, or probation office may be admitted to testing by qualifying under any of the following categories:

7.3.a. Adjudicated youth with a court order from a judge or an order from a magistrate designated as a juvenile referee is to be admitted for testing, even if the individual is still enrolled in school; or

7.3.b. Upon entering the control of a detention center or group care facility, an assessment that addresses the educational needs of the child is to be conducted by qualified personnel of the facility. If it is determined that there is no reasonable expectation of graduation from the high school of origin and if the possibility of being placed at a long-term in state facility is very unlikely, the youth may be admitted to testing:

7.3.b.1. Prior to testing, the candidate sixteen (16), seventeen (17) or eighteen (18) years of age must be officially transferred from the public school system to the detention center or group care facility as evidenced by documentation from the last school/system attended.

7.3.b.2. Must pass the practice test for the WVDE approved high school equivalency assessment (WV passing standard may exceed national minimum passing standard) as evidenced by documentation from an instructor at the facility.

7.3.b.3. If the program is approved as an Option Pathway program and the candidate is enrolled in the program, the candidate sixteen (16), seventeen (17) or eighteen (18) years of age must follow the Option Pathway guidelines. Students, who are enrolled in the Option Pathway and are no longer a resident of the West Virginia state-operated institutional facility or are no longer adjudicated, upon release are eligible to continue completion of the Option Pathway at the high school of origin.

7.4. All youth who have taken the WVDE approved high school equivalency assessment as per section 7.1.-7.3. but did not pass the test and are no longer a resident of a government program or are no longer a resident of a West Virginia state-operated institutional facility or are no longer adjudicated are eligible to continue testing upon completion of the program or upon release by presenting state issued photo identification and qualifying under either of the following categories:

7.4.a. A copy of a court order from a judge or an order from a magistrate, designated as a juvenile referee, is provided for the Examiner. The order must state that the individual will take the high school equivalency assessment. Such an order allows an individual, sixteen (16), seventeen (17) or eighteen (18) years of age, to test even if the individual is still enrolled in school; or

7.4.b. The candidate's previous scores are located in the databank indicating to the Examiner that the previous Examiner obtained all necessary documentation needed for testing.

§126-32-8. Testing of Option Pathway Students Enrolled in Mountaineer ChalleNGe Academy.

8.1. Mountaineer ChalleNGe Academy is approved by the WVDE to implement the Option Pathway.

8.2. Examinees, at least sixteen (16), seventeen (17) or eighteen (18) years of age, who are participating in the Mountaineer ChalleNGe Academy may take the WVDE approved high school equivalency assessment without withdrawing from a West Virginia high school.

8.3. The sixteen (16), seventeen (17) or eighteen (18) years of age student currently enrolled in a West Virginia high school participating in the Option Pathway shall be awarded a high school diploma from their high school of origin by Mountaineer ChalleNGe Academy and be counted as a graduate if the student meets the following requirements:

8.3.a. Attends preparation classes for high school equivalency assessment;

8.3.b. Passes the WVDE approved high school equivalency assessment;

8.3.c. Completes the 22 week Mountaineer ChalleNGe Academy Program;

8.3.d. Successfully completes the competencies in the four (4) National Guard Youth Challenge Program Courses, a state-approved career and technical concentration; and

8.3.e. Meets the scores of a career readiness assessment as determined by the WVDE.

8.4. The Mountaineer ChalleNGe Academy students who successfully completes the Option Pathway has a compelling reason to attend school for fewer than four full years while a resident and during the post residential phase. For example, when a student successfully passes the WVDE approved high school equivalency assessment and completes the career and technical concentration while at the Academy, he or she has completed the requirements for graduation even though the graduation cohort may not yet have graduated. Another example would be when a student completes competencies in the four (4) National Guard Youth Challenge Program Courses, which is a state-approved career and technical concentration, but did not pass the high school equivalency assessment, the student may return to the high school of origin to complete the high school equivalency content areas where the passing scores were not achieved at the Academy. Upon completion of the high school equivalency assessment, the student will have completed the requirements for graduation even though the graduation cohort may not yet have graduated. The county or school would not acquire a penalty for graduation rate or attendance rate in either scenario.

8.5. The Mountaineer ChalleNGe Academy student who does not complete the Option Pathway while a resident of the program, may return to the high school of origin during the post residential phase, which lasts one year from Mountaineer ChalleNGe Academy graduation date, or after the post-residential phase to complete only the deficient areas of study.

8.6. A Mountaineer ChalleNGe Academy student who does not pass the high school equivalency assessment while in the Academy may retest during the post-residential phase and may use the

Mountaineer Challenge Academy's photo identification if documentation reflecting the cadet's graduation date is presented to the Examiner or after the post-residential phase using a valid and current state-issued photo identification, i.e., driver's license, state alternative identification, military identification or a valid passport, with current name, birth date, and preferably a Social Security number. Failure to present applicable photo identification will result in a loss of testing privilege until such identification is presented.

§126-32-9. Testing of Option Pathway Students in West Virginia State Correctional or Residential Facilities for Custody and Treatment.

9.1. Examinees, at least sixteen (16), seventeen (17) or eighteen (18) years of age, who are enrolled in a juvenile institutional education program shall have the opportunity to complete the WVDE approved Option Pathway, to earn a standard high school diploma and to be counted as a graduate of the school of origin for the purpose of calculating the graduation rate if the following conditions are met:

9.1.a. Attends preparation classes for high school equivalency assessment;

9.1.b. Passes an approved practice test and the WVDE approved high school equivalency assessments following guidelines in 7.2.;

9.1.c. Successfully completes a career and technical concentration according to the guidelines established by the Office of Institutional Education.

9.2. The examinee, at least eighteen (18) to twenty-one (21) years of age, who is enrolled in an adult institutional education program providing the Option Pathway, shall have the opportunity to complete the WVDE approved Option Pathway, to earn a standard high school diploma and to be counted as a graduate of the school of origin for the purpose of calculating the graduation rate if the following conditions are met:

9.2.a. Attends preparation classes for the WVDE approved high school equivalency assessment;

9.2.b. Passes an approved practice test and the WVDE approved high school equivalency assessment following guidelines in 7.2.;

9.2.c. Successfully completes a career and technical concentration according to the guidelines established by the Office of Institutional Education.

9.3. The school-age student in a juvenile or an adult institutional education program who successfully completes the Option Pathway has a compelling reason to attend school for fewer than four full years while a resident and during the post residential phase. For example, when the student successfully passes the WVDE approved high school equivalency assessment and completes the career and technical concentration while at the institution, he or she has completed the requirements for graduation even though the graduation cohort may not yet have graduated. Another example would be when a student completes a career and technical concentration but did not pass the WVDE approved high school equivalency assessment. The student may return to the high school of origin to complete the high school equivalency content areas where the passing scores were not achieved at the institution. Upon completion of the WVDE approved high school equivalency assessment, the student has

completed the requirements for graduation even though the graduation cohort may not yet have graduated. The county or school would not acquire a penalty for graduation rate or attendance rate in either scenario.

§126-32-10. Residence.

10.1. Persons meeting all criteria and demonstrating themselves eligible under the State of West Virginia High School Equivalency Diploma guidelines shall be admitted to testing for the purpose of securing a State of West Virginia High School Equivalency Diploma. The candidate must present clear, current, state-issued photo identification, i.e., driver's license, state alternative identification, military identification or a valid passport. The Examiner may request further proof or other pertinent documentation as evidence of identity, i.e., birth certificate, Social Security card, etc.

§126-32-11. Transcripts of Scores.

11.1. The fact that a person has or has not taken the high school equivalency assessment is confidential information since disclosing participation in the program is tantamount to reporting the absence of a traditional high school diploma. Therefore, no name of a credential recipient will be released unless an individual candidate has signed written permission to release the information. Nevertheless, the candidate when registering for the WVDE approved high school equivalency assessment agrees that information will be shared with necessary West Virginia public school systems and WVDE. Information for data sharing purposes only may be shared with other agencies.

11.2. The original copy of the transcript and diploma shall be issued at no cost. A transcript, a verification and/or a replacement copy of the State of West Virginia High School Equivalency Diploma will be provided for a fee, which is determined by the WVDE.

§126-32-12. Falsification of the High School Equivalency Tests Information and/or Center Violations.

12.1. Falsification of Test Information or Personal Security Violations.

12.1.a. Any falsification of information and/or cheating on the high school equivalency assessment will result in penalties as outlined in the testing guidelines for West Virginia Examiners' Manual. Penalties may include potential loss of teaching license and potential criminal prosecution.

12.2. Security Compromises in Centers.

12.2.a. Testing center violations will be processed according to the procedures outlined in the West Virginia Examiners' Manual and may include potential loss of teaching license and potential criminal prosecution.

§126-32-13. Testing Fees.

13.1. Testing fees shall be established by the WVDE.

§126-32-14. All correspondence regarding this policy should be directed to:

14.1. Office of Adult Education.

Office of Adult Education
West Virginia Department of Education
Capitol Complex, Building 6, Room 243
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
(304) 558-6315.

§126-32-15. Severability.

15.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.